

REMARKS

The Examiner has required election between the claims of Groups I-IV as indicated in the March 22, 2007 Office action. Applicants herein elect with traverse the claims of Group I to prosecute in the present Application. Applicants expressly reserve the right to pursue non-elected claims in any related application, claiming priority to the present Application, such as a continuation, divisional, or continuation-in-part application.

In accordance with the arguments below, Applicants:
elect the claims of Group I for continued prosecution and examination;
traverse the restriction of claims 9, 11, and 13 (see Group I explanation);
traverse the restriction of claims 4-8, 10, 12, and 14 (see Group II explanation);
request entry and examination of amended claim 15 and new claim 26 (see Group III explanation); and
withdraw claims 16-25.

Group I

Group I as presently constituted in the Office action consists of claims 1-3. (Office action at 2). However, claims 9, 11, and 13 are dependent upon claim 1. Applicants therefore respectfully request that claims 9, 11, and 13 be grouped with Group I.

Applicants also respectfully traverse the Examiner's classification of the Group I claims under class 604, subclass 23. Subclass 23 is entitled "Gas application" and is described in the Class Definition as "[s]ubject matter for injecting a body treating material in the form of gas into the body or for the application of said gas against the body." The method of claim 1, however, recites that blood in "an extracorporeal blood circuit" is exposed "with nitric oxide gas." (emphasis added). Claim 1 does not recite a method wherein a gas is injected into the body because under claim 1 the gas is injected into the blood circuit that is external to the body.

Applicants respectfully request classification of the claims of Group I under class 604, subclass 5.02. Subclass 5.02 is entitled "Pathogenic component removed" and is described in the Class Definition as "[s]ubject matter wherein an infectious component (e.g., virus, bacteria, parasite etc.) of the blood is removed from the blood and the uninfected component is returned to

the body.” Subclass 5.02 is indented under subclass 5.01. Subclass 5.01 is entitled “Constituent removed from blood and remainder returned to body” and is described in the Class Definition as “[s]ubject matter wherein a portion of the blood, such as an impurity or component, is removed therefrom before the residue is returned to the body.” Subclass 5.01 is indented under subclass 4.01. Subclass 4.01 is entitled “Blood drawn and replaced or treated and returned to body” and is described in the Class Definition as “means for removing blood from a person’s body and either returning the same blood, or a constituent thereof, to the body after it has been handled from some purpose.”

Claim 1 recites a method wherein blood is circulated through an extracorporeal circuit (subclass 4.01) and pathogenic content is “reduce[ed]” (subclasses 5.01 and 5.02). Accordingly, class 604, subclass 5.02 is the appropriate classification for the claims of Group I.

Group II

Group II as presently constituted in the Office action consists of claims 4-14. (Office action at 2). However, as argued above, claims 9, 11, and 13 are dependent upon claim 1 of Group I and should be grouped therein. Claim 4 is independent and claims 5-8, 10, 12, and 14 depend from claim 4.

Applicants respectfully request that the claims 4-8, 10, 12, and 14 of Group II be grouped with Group I. As the Examiner has noted, related inventions are distinct only if “the inventions as claimed do not overlap in scope, i.e. are mutually exclusive.” MPEP § 806.05(j). The inventions of Groups I and II, however, do in fact overlap in scope. Both claim 1 and claim 4 recite methods of reducing pathogens in blood comprising, in part, providing extracorporeal blood circuits (the cardiopulmonary bypass circuit of claim 4 is a form of extracorporeal blood circuit) and exposing the blood in the circuits with nitric oxide gas. The additional recitation in claim 4 of an oxygenator does not make claims 1 and 4 mutually exclusive because a hypothetical device practicing claim 4 also would practice all the limitations of claim 1.

Furthermore, in order to support a requirement for restriction, “both two-way distinctness and reasons for insisting on restriction are necessary, i.e. separate classification, status in the art, or field of search.” MPEP § 806.05(j) (emphasis added). As Applicants argue above, the correct classification for Group I is nearly identical to Group II; both classifications share a common

subclass parent. Both Group I and Group II recite methods of reducing pathogens in blood. Finally, the field of search will be very similar from Group I and Group II. Accordingly, the claims of Group II should be grouped with Group I.

Group III

Group III as presently constituted in the Office action consists of claims 15-20. (Office action at 2). Claim 15 and claim 16 are independent. Claims 17-20 are dependent upon claim 16.

Claim 15 has been amended in response to the Examiner's Restriction. In the Office action, the Examiner stated that "Groups I, II, and III are related as process and apparatus for its practice," but that the "apparatus [in Group III] comprises a free radical scavenger not used by the claimed processes [in Groups I and II], therefore indicating that the processes can be practiced by a different apparatus." (Office action at 3). Claim 15 has been amended to remove the previously recited free radical scavenger. Claim 26, dependent upon claim 15, recites the free radical scavenger. This amendment addresses the Examiner's previous reason for restricting claim 15 from Group I. Accordingly, Applicants respectfully request that claims 15 and 26 be grouped with Group I.

Claims 16-20 have been withdrawn. Applicants expressly reverse the right to pursue these non-elected claims in any related application, claiming priority to the present Application, such as a continuation, divisional, or continuation-in-part application.

Group IV

Group IV consists of claims 21-25. Claims 21-25 have been withdrawn. Applicants expressly reverse the right to pursue these non-elected claims in any related application, claiming priority to the present Application, such as a continuation, divisional, or continuation-in-part application.

Applicants believe that this Response is in compliance with 37 C.F.R. § 1.143, and request the Examiner's prompt response. Any fees associated with this filing may be charged to Sidley Austin LLP's Deposit Account No. 50-1597. This submission is timely filed.

Respectfully Submitted,
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